

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO (DAYTON)**

THE CITY OF DAYTON,	:	
	:	
Plaintiff,	:	CASE NO. 3:17-cv-00229-TMR
	:	
vs.	:	JUDGE THOMAS M. ROSE
	:	
PURDUE PHARMA L.P., <i>et al</i> ,	:	
	:	
Defendants.	:	

**MOTION OF DEFENDANT McKESSON CORPORATION THAT IT NOT BE  
REQUIRED TO RESPOND TO COMPLAINT IN THIS COURT**

Defendant McKesson Corporation (“McKesson”) hereby requests that McKesson not be required to answer, move, or otherwise respond to Plaintiff’s Complaint in this Court because the result of either the successful removal of this action or any remand motion will be that McKesson and the other Distributor Defendants are not part of this federal court action.

Defendant Endo Pharmaceuticals, Inc. (“Endo”) removed this action to this Court on July 7, 2017. Endo’s Notice of Removal [Doc. # 1] asserts that McKesson and the other Distributor Defendants are dispensable parties who should be severed. [See Doc. # 1, ¶¶ 36-39.] Alternatively, Endo’s Notice of Removal asserts that the Distributor Defendants are fraudulently misjoined. [See *id.* ¶¶ 40-43.] If Endo’s removal is successful, it will result in McKesson and the other Distributor Defendants being severed from this federal court action. Likewise, if Plaintiff moves to remand and is successful, McKesson and all other Defendants no longer will be litigating in this Court. Accordingly, no circumstance exists in which McKesson would be required to answer, move, or otherwise respond to Plaintiff’s Complaint in this Court.

In addition, in the state court action, Plaintiff and McKesson had previously filed a consent motion for an extension of time for McKesson to answer, move, or otherwise respond to

Plaintiff's Complaint. On June 30, 2017, the Montgomery County Court of Common Pleas granted that consent motion and issued its Order providing McKesson until September 8, 2017, to respond to Plaintiff's Complaint.<sup>1</sup> (See Exhibit 1, attached.)

Although this present motion is not a motion for an extension of time under S.D. Ohio Civ. R. 7.3(a) to which the parties affected must consult, the parties nevertheless did so consult. Undersigned counsel for McKesson (Vince Holzhall) and counsel for Plaintiff (John Climaco) exchanged voicemails and emails on Monday, July 10, 2017, and again exchanged emails on Wednesday, July 12, 2017. The consultations occurred in good faith regarding whether a consent motion could be filed with the Court regarding the relief requested by McKesson in this motion. At the time of the filing of this motion, the parties have not reached a consensus and it is not currently known whether Plaintiff will or will not oppose this motion.

Wherefore, McKesson respectfully requests that the Court grant its motion and order that McKesson not be required to answer, move, or otherwise respond to the Complaint in this Court.

Dated: July 12, 2017

Respectfully submitted,

/s/ Vincent I. Holzhall  
Vincent I. Holzhall (0074901)  
Alana Valle Tanoury (0092265)  
**STEPTOE & JOHNSON PLLC**  
41 South High Street, Suite 2200  
Columbus, Ohio 43215  
(614) 221-5100 phone; (614) 221-0952 fax  
vince.holzhall@steptoe-johnson.com  
alana.tanoury@steptoe-johnson.com

*Counsel for Defendant McKesson Corporation*

---

<sup>1</sup> Under 28 U.S.C. § 1450, all "injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court."

**CERTIFICATE OF SERVICE**

I hereby certify a copy of the foregoing *Motion of Defendant McKesson Corporation That It Not Be Required to Respond to Complaint in this Court* was served on the following by the Court's electronic case filing system to all those participating therein and by regular United States mail, postage prepaid, to the following this 12th day of July, 2017:

John R. Climaco (0011456)  
David M. Cuppage (0047104)  
Margaret M. Metzinger (0065624)  
CLIMACO, WILCOX, PECA,  
& GAROFOLI, C.O., L.P.A.  
55 Public Square, Suite 1950  
Cleveland, Ohio 44113

Paul J. Napoli  
Napoli Shkolnik PLLC  
360 Lexington Avenue, 11th Floor  
New York, NY 10017

John C. Musto  
City Attorney's Office - 3  
P.O. Box 22  
101 West Third Street  
Dayton, OH 45401

*Counsel for Plaintiffs*

Daniel Jerome Buckley  
Vorys Sater Seymour & Pease  
1 Atrium Two  
221 E Fourth Street, Suite 2000  
Cincinnati, OH 45201-0236

*Counsel for Defendants Purdue Pharma L.P.,  
Purdue Pharma Inc., and The Purdue Frederick  
Company, Inc.*

Carole S. Rendon (0070345)  
Tera N. Coleman (0090544)  
BAKER & HOSTETLER LLP  
127 Public Square, Suite 2000  
Cleveland, OH 44114-1214

G. Karl Fanter (0075686)  
BAKER & HOSTETLER LLP  
3200 PNC Center  
1900 East Ninth Street  
Cleveland, OH 44114

*Counsel for Defendants Endo Health Solutions,  
Inc. and Endo Pharmaceuticals, Inc.*

Teva Pharmaceuticals USA, Inc.  
c/o Corporate Creations Network Inc.  
3411 Silverside Road  
Wilmington, DE 19810

Cephalon, Inc.  
c/o Corporate Creations Network Inc.  
3411 Silverside Road  
Wilmington, DE 19810

Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933

Janssen Pharmaceuticals, Inc.  
116 Pine Street, Suite 320  
Harrisburg, PA 17101

Ortho-McNeil-Janssen Pharmaceuticals, Inc.  
n/k/a Janssen Pharmaceuticals, Inc.  
116 Pine Street, Suite 320  
Harrisburg, PA 17101

Janssen Pharmaceutica, Inc. n/k/a Janssen  
Pharmaceuticals, Inc.  
116 Pine Street, Suite 320  
Harrisburg, PA 17101

Allergan PLC f/k/a Actavis PLC  
CT Corporation System  
4400 Easton Commons Way, Suite 125  
Columbus, Ohio 43215

Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.  
Corporate Creations Network, Inc.  
119 E. Court Street  
Cincinnati, Ohio 45202

Watson Laboratories, Inc.  
Corporate Creations Network Inc.  
119 E. Court Street  
Cincinnati, OH 45202

Actavis LLC  
Corporate Creations Network Inc.  
119 E. Court Street  
Cincinnati, OH 45202

Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.  
Corporate Creations Network Inc.  
119 E. Court Street  
Cincinnati, OH 45202

Cardinal Health, Inc.  
7000 Cardinal Place  
Dublin, Ohio 43017

AmerisourceBergen Corporation  
1300 East Ninth Street  
Cleveland, Ohio 44114

Jordan D Rauch  
O. Judson Scheaf, III  
Hahn Loeser & Parks LLP  
65 E State Street, Suite 1400  
Columbus, OH 43215

Gregory D Brunton  
Gordon Rees Scully Mansukhani, LLP  
41 South High Street, Suite 240  
Columbus, OH 43215

*Counsel for Defendant Russell Portenoy*

*Counsel for Defendants Perry Fine, Scott  
Fishman, and Lynn Webster*

/s/ Vincent I. Holzhall

Vincent I. Holzhall (0074901)